

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT, MIAMI, FL
301 N. Miami Ave, MIAMI, FL

03-22141

CIV. - GOLD

ROBERT F CLARKE, Pro Se
Claimant

CASE NO:

v

MAGISTRATE JUDGE
SIMONTON

TOMMY THOMPSON, SECRETARY
HEALTH & HUMAN SERVICES
Agency

DATE: August 11, 2003

In regards to HIC Number 224 50 7675A, request order from the Secretary of Health & Human Services, via Social Security Administration to order Medicare HMO AVMED to reimburse claimant for full amount of services from British Diagnostic Institute for full amount of services during Spring 2001, an amount in excess of \$1,000, denied by ALJ in the Miami Region Social Security Hearings & Appeals Office.

The ALJ's actions not supported, findings, or conclusions not supported by the evidence. There was an abuse of discretion by the ALJ. and, broad policy/procedure affecting the public interest.

See 20 CFR, S 404.970, 42 CFR S 422.608. See S 1852(g)(5) of Social Security Act, 42 USC, S w-22(g)(5).

FACT: Claimant, member of Medicare HMO AVMED, rarely used AVMED services, but in this situation needed special treatment for impotence, presumably due to diabetes, that threatened his marriage of over 35 years. Hearing commercials on the radio of the British Diagnostic Institute, seemed a possibility for help. Claimant called AVMED and discussed his going to the Institute over the phone, and was told to go ahead, it was located out of the Miami area and submit paid bills for reimbursement. Claimant made several visits to BDI, paid the bills, and after collecting 2 or 3 paid bills, submitted them to AVMED, and continued to go to BDI and paying more bills. Claimant called after awhile to ask about the 2 or 3 already sent in and was informed AVMED was still working on them. Claimant continued to go to BDI for treatment. Then AVMED sent a letter to claimant informing him "to wait to the end, send all bills in in one total marked paid in full along with a completed form HCFA 1500 completed for all visits. Claimant then finished his treatments with BDI, and furnished AVMED with the paid in full complete bill along with the requested HCFA form 1500. To his shock, AVMED then sent a letter saying they were not going to reimburse claimant as he had no "authorization number".

DISCUSSION: When claimant first called AVMED AVMED said nothing of an authorization number, but said go ahead, was located out of the area, and send in bills paid. After sending in several bills and not hearing, claimant called in to ask and was told still AVMED was working on them..AVMED said nothing about wanting an "authoriza-

WCK

ROBERT F CLARKE, Pro Se

Aug 11, 2003

AVMED

tion number or offering one or saying there is a need for one or there will be a problem. Claimant in good faith did as AVMED instructed, went to BDI, sent in several paid bills, called, got letter to wait till the end, waited till end, then was shocked when AVMED suddenly whe it was all too late said, we are not paying, no authorization number. Claimant learned from BDI that had claimant not been in a medicare HMO, BDI would have submitted bills to Medicare and Medicare would have paid, in part, and many of their patients came to them not in Medicare HMOs. In retroapct, claimant now suggests that AVMED may have purposefully midled him not just at the start, but later on as they saw the bills mounting and let him continue treatments until the end when they had opportunity to inform him of the authorization number problem so that in the end with their "trickery" they would not have to repay him the several thousand dollar bill they could see was coming. Claimant obviously cannot know this, but is suspicious in retrospect..why did they never on several occasions tell him about need for authorization number.

FACT: In the hearing before the ALJ in Miami, the lawyer for AVMED sloughed off the several opportunities to have warned claimant, and also stated that as a good well gesture...at the end of treatment when they denied repayment, AVMED instead sent claimant a token check for the first visit as a gesture; when in fact claimant never got any token check for the fist visit then or since. Claimant pointed out to ALJ there never was a check, and about all the opportunities AVMED had to correct the festering situation and never did. ALJ paid no attention to claimant's points. A gross miscarriag^e has happened here, from both AVMED and the ALJ.

DISCUSSION: Since Social Security made monthly payments to AVMED for medical coverage for the claimant, which in turn promised Social Security they would cover him medically no matter if it cost more or less than those regular monthl payments, had the ALJ found in favor or if this court now finds in favor of claimant, it sets the Medicae pain ZERO to reimburse claimant. It only costs AVMED. As to AVMED, they enjoed the membership of claimant for the period of his membership with hardly any claims for hardly any funds. W^{ere} AVMED be forced to repay claimant they would still make money on his membership. Had claimant not been in an HMO, Social Security would have paid, in part BDI for its services as they have for others. The ALJ committed an abuse of discretion by not paying heed to the misleading actions by AVMED to claimant, AVMED's failure to ever say anything to claimant about no autorization number, and the lie about sending claimant a token check at the end. Perhaps an error of law in that had the claimant not been in a Medicare HMO, Social Security would have paid. ALJ's findings are at variance with what should have been. The public interest is hurt by allowing a Social Security approved HMO to teat (trick?) an hoenst medically needy member in this fashion. If AVMED were an attorney, would they be disbarred for such conduct?

CONCLUSION: Right the wrongs of AVMED and the ALJ, and requir^e AVMED to reimburse the claimant for the Spring 2001 BDI services. Claimant is an unemployed person collecting Social Security post age 65, who quit AVMED in disgust in Fall 2001 after this shoddy treatment. AVMED made money ob claimant's membership, even if forced to pay this bill...Paying this bill costs Social Security nothing..only AVMED

ROBERT F CLARKE Pro Se Aug 11, 2003

NOTE: All documentation is in the hands of Department of Health & Human Services, Departmental Appeals Board, Medicare Appeals Council, Room 633 F, Humphrey Building, 200 Independence AVE SW Wash, DC 20201 This includes: form HCFA 1500, final bill marked paid in full, letter to claimant informing him to wait to the end and submit one final bill total marked paid in full along with the form 1500 covering all visits, and final turn down letter. Had claimant ever imagined there would be a problem, would have asked at start for a letter from AVMED telling him to go ahead, was out of area.

Robert Clarke 8/11/03

Robert F Clarke Pro Se

Copies to:

1. General Counsel,
DHHS, 200 Independence AVE SW
Wash, DC 20201
2. US Attorney, Miami Region
Miami, FL
3. Attorney General USA
J Ashcroft
Dept of Justice, Wash, DC

Note: Claimant sought legal help from the Florida Bar Referral Office, obtained 12 names of Social Security attorneys, none of whom was interested, they all wanted to do just SSI and Social Security benefit claims, also sought help from the New Jersey base Social Security claimants organization, same end result, therefore, claimant has no option but to proceed pro se.

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ROBERT F CLARKE
PRO SE

10640 SW 129 Court Miami FL 33196
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF MIAMI Dade
(EXCEPT IN U.S. PLAINTIFF CASES)

Date 03/22/41 / At 10:00 AM
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
PRO SE
3053821952

(d) CIRCLE COUNTY WHERE ACTION AROSE: DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

Citizen of This State

PTF DEF

 1

Incorporated or Principal Place of Business in This State

PTF DEF

 4

Citizen of Another State

 2

Incorporated and Principal Place of Business in Another State

PTF DEF

 5

Citizen or Subject of a Foreign Country

 3

Foreign Nation

PTF DEF

 6

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

Transferred from
another district
(specify) 5

Multidistrict Litigation

Appeal to District Judge from
Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT

- 110 Insurance
- 120 Marne
- 130 Miller Act
- 140 Negotiable Instrument
- 150 Recovery of Overpayment & Enforcement of Judgment
- 151 Medicare Act
- 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- 153 Recovery of Overpayment of Veteran's Benefits
- 160 Stockholders Suits
- 190 Other Contract
- 195 Contract Product Liability

A TORTS

PERSONAL INJURY	PERSONAL INJURY
<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med Malpractice
<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability
<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability
<input type="checkbox"/> 330 Federal Employers Liability	PERSONAL PROPERTY
<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud
<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending
<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage
<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability
<input type="checkbox"/> 360 Other Personal Injury	

FORFEITURE/PENALTY

- 610 Agriculture
- 620 Other Food & Drug
- 625 Drug Related Seizure of Property 21 USC 881
- 630 Liquor Laws
- 640 R.R. & Truck
- 650 Airline Regs
- 660 Occupational Safety/Health
- 690 Other

A BANKRUPTCY

- 422 Appeal 28 USC 158
- 423 Withdrawal 28 USC 157

A OTHER STATUTES

- 400 State Reapportionment
- 410 Antitrust
- 430 Banks and Banking
- 450 Commerce/ICC Rates/etc
- 460 Deportation
- 470 Racketeer Influenced and Corrupt Organizations
- 810 Selective Service
- 850 Securities/Commodities/Exchange
- 875 Customer Challenge 12 USC 3410
- 891 Agricultural Acts
- 892 Economic Stabilization Act
- 893 Environmental Matters
- 894 Energy Allocation Act
- 895 Freedom of Information Act
- 900 Appeal of Fee Determination Under Equal Access to Justice
- 950 Constitutionality of State Statutes
- 890 Other Statutory Actions
- A OR B

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

20 CFR § 404.970

42 USC § 1983 § 1982 (g)(5) § 1982 (g)(5) 45 CFR 54.1

42 CFR § 442.608

42 USC § 1983 § 1982 (g)(5) § 1982 (g)(5) 45 CFR 54.1

LENGTH OF TRIAL

42 CFR § 442.608 42 USC § 1983 § 1982 (g)(5) § 1982 (g)(5) 45 CFR 54.1

via days estimated (for both sides to try entire case)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
□ UNDER F.R.C.P. 23DEMAND \$ (See Fig. 1 in
Excess of \$7000 HHS)CHECK YES only if demanded in complaint
JURY DEMAND: YES NO

VIII. RELATED CASE(S) (See instructions)

IF ANY

JUDGE

DOCKET NUMBER

DATE

8/11/03

SIGNATURE OF ATTORNEY OF RECORD

Robert F. Clarke

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING ICP

JUDGE

MAG. JUDGE

8150.00 887234

08/11/03